**SAN DIEGO CITY SCHOOLS**

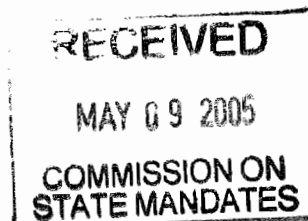
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Sent by Facsimile

May 9, 2005



Paula Higashi, Executive Director

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Subject: Comments on Staff Analysis: *Standardized Testing and Reporting*
Case No.: 04-RL-9723-01

Dear Ms. Higashi:

The following is the claimant's response to the staff's analysis regarding conclusion number 3 on page two that involves giving an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given.

Commission staff relies on *Castaneda v. Pickard, President, Raymondville Independent School District, Board of Trustees, et al.*, 648 F.2d 989, (1981) to expand the policy statements of the Equal Education Opportunities Act of 1974 (EEOA) (20 U.S.C. §1701 et seq.) into a federal mandate upon California school districts. Such reliance is misplaced.

In *Castaneda* the Plaintiffs, Mexican-American children and their parents, who represented a class of others similarly situated, brought suit against defendant school district. Plaintiffs alleged that defendant unlawfully discriminated against Mexican-Americans in violation of U.S. Const. amend. XIV, 42 U.S.C.S. § 1983, Title VI of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000d et seq., and the Equal Educational Opportunities Act of 1974, 20 U.S.C.S. § 1701 et seq. Plaintiffs contended the defendant used an ability grouping system for classroom assignments which was based on racially discriminatory criteria and discriminated in the hiring and promotion of Mexican-American faculty.

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The appellate court reversed the judgment in favor of defendant school district and remanded for further proceedings because the district court was required to determine whether defendant had discriminated against Mexican-Americans in the past and then consider whether the effects of any past discrimination were fully erased and, after such inquiry, determine the merits of the claims of plaintiffs, Mexican-American children and their the issue before the court was the existence of racial discrimination against Mexican-Americans through the policies and practices of a Texas school district.

The court was not analyzing the EEOA as to whether it constituted a mandate. Commission staff, however, finds such mandate language in *Castaneda* as quoted in its Draft Staff Analysis:

We understand §1703(f) to impose on educational agencies not only an obligation to overcome the direct obstacle to learning which the language barrier itself poses, but also a duty to provide limited English speaking ability students with assistance in other areas of the curriculum where their equal participation may be impaired because of the deficits incurred during participation in an agency's language remediation program.¹

A look further into that same paragraph states schools are free to design the appropriate programs:

We also believe, however, that §1703(f) leaves schools free to determine whether they wish to discharge these obligations simultaneously, by implementing a program designed to keep limited English speaking students at grade level in other areas of the curriculum by providing instruction in their native language at the same time that English language development effort is pursued, or to address these problems in sequence, by focusing first on the development of English language skills and then later providing students with compensatory and supplemental education to remedy deficiencies in other areas which they may develop during this period. In short, §1703(f) leaves schools free to determine the sequence and manner in which limited English speaking students tackle this dual challenge so long as the schools design programs which are reasonably calculated to enable these students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.²

Indeed, the court also noted:

We do not believe that Congress, at the time it adopted the EEOA, intended to require local educational authorities to adopt any particular type of language remediation program.³

¹ Staff Draft Analysis at page 33; *Castaneda* at page 1011.

² *Ibid.*

³ *Id.* at page 1008

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In *Castaneda* the law of the case was racial discrimination. *Castaneda* provides us with no guidance as to whether the EEOA is a federal mandate regarding STAR activities.

The staff analysis fails to identify any federal mandate that state school districts must : administer an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was enrolled in the district for less than 12 months before the time the last STAR Program test was administered; exempt pupils under certain circumstances; Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, §851, subd. (a).)

Please contact me if you have any questions or comments. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Palkowitz', with a large, stylized loop at the end.

Arthur M. Palkowitz
Manager
Office of Resource Development

AMP:tsh

PROOF OF SERVICE

RE: *Standardized Testing and Reporting*, Case Number 04-RL-9723-01

I am employed in the County of San Diego, State of California. I am over 18 years of age and not a party to the within entitled action; my business address is 4100 Normal Street, Room 3209, San Diego, California 92103.


On May 9, 2005, I served the foregoing document(s) described as: **Comments on Staff Analysis**

On the person/parties in this action by faxing and placing a true and correct copy thereof enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite #300
Sacramento, CA 95814

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 9, 2005 in San Diego, California.


Tenya Rushing